

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
Misuse of Internet Protocol (IP))	
Captioned Telephone Service)	CG Docket No. 13-24
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for Individuals)	
with Hearing and Speech Disabilities)	

**Comments of
Hearing Loss Association of America (HLAA)
Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)
National Association of the Deaf (NAD)
Association of Late-Deafened Adults (ALDA)
Cerebral Palsy and Deaf Organization (CPADO)
American Association of the Deaf-Blind (AADB)
Deaf Seniors of America (DSA)
California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH)
Deaf/Hard of Hearing Technology Rehabilitation
Engineering Research Center (DHH-RERC)
Rehabilitation Engineering Research Center on Universal Interface &
Information Technology Access (IT-RERC)**

via electronic filing
April 15, 2019

Samuelson-Glushko Technology Law & Policy
Clinic (TLPC) • Colorado Law
Counsel to TDI
Blake E. Reid
Director
Corian Zacher
Student Attorney
tlpc@colorado.edu • 303.492.0548

Hearing Loss Association of America (HLAA)

Barbara Kelley, Executive Director • bkelly@hearingloss.org
Lise Hamlin, Director of Public Policy, LHamlin@Hearingloss.org
7910 Woodmont Avenue, Suite 1200, Bethesda, MD 20814
301.657.2248
www.hearingloss.org

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI)

Claude Stout, Executive Director • cstout@TDIforAccess.org
PO Box 8009, Silver Spring, MD 20907
www.TDIforAccess.org

National Association of the Deaf (NAD)

Howard Rosenblum, Chief Executive Officer • howard.rosenblum@nad.org
Contact: Zainab Alkebsi • zainab.alkebsi@nad.org
8630 Fenton Street, Suite 820, Silver Spring, MD 20910
301.587.1788
www.nad.org

Association of Late-Deafened Adults (ALDA)

Richard Brown, President • President@alda.org
8038 MacIntosh Lane, Suite 2, Rockford, IL 61107
815.332.1515
www.alda.org

Cerebral Palsy and Deaf Organization (CPADO)

Mark Hill, President • president@cpado.org
12025 SE Pine Street #302, Portland, Oregon 97216
503.512.5066
www.cpado.org

American Association of the Deaf-Blind (AADB)

“The Unstoppable” René G Pellerin, President • info@renetheunstoppable.com
65 Lakeview Terrace, Waterbury Center, VT 05677
802.321.4864
www.aadb.org

Deaf Seniors of America (DSA)

Nancy B. Rarus, President • nbrarus@gmail.com
Alfred Sonnenstrahl, Vice President • alsonny@icloud.com
5619 Ainsley Court, Boynton Beach, FL 33437

California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH)

Sheri Farinha, Vice Chairperson • sfarinha@norcalcenter.org
4708 Roseville Road, Suite 111, North Highlands, CA 95660

**Rehabilitation Engineering Research Center on Universal Interface & Information
Technology Access (IT-RERC)**

Gregg Vanderheiden, PhD, Director • greggvander@umd.edu

Trace Research & Development Center • University of Maryland

4130 Campus Drive, College Park, MD 20742

**Rehabilitation Engineering Research Center on Technology for the Deaf and Hard of
Hearing, Gallaudet University (DHH-RERC)**

Christian Vogler, PhD • christian.vogler@gallaudet.edu

800 Florida Avenue NE, TAP – SLCC 1116, Washington, DC 20002

Summary

Hundreds of thousands of Americans rely on IP CTS to communicate with family and friends, maintain an independent lifestyle, and remain in the workforce. Many people who are deaf, hard of hearing, and DeafBlind find that IP CTS meets their needs better than any other form of TRS.

The Commission has not established that there is waste, fraud, and abuse in the IP CTS program. Without empirical evidence that consumers have misused IP CTS, Section 225 mandates the Commission maintain the ease of registering for and using IP CTS and enable consumer choice by facilitating competition among providers.

Aggregate data on IP CTS gathered via the User Registration Database can help the Commission confirm that there is little evidence of waste, fraud, and abuse in the IP CTS program. However, the Commission must be thoughtful and conscientious as it balances the need for important data with the privacy of hundreds of thousands of Americans. The Commission should not infringe on users' privacy rights by requiring that providers submit the unique account identifier with call detail reports and should consider a privacy protective alternative. Rather than tying the call detail reports back to the URD, providers should submit an anonymized number that the Commission can deanonymize if it suspects a user of acting fraudulently.

The Commission should also permit providers to continue providing IP CTS service while user registration is pending. Because providers will not be compensated for minutes used by people whose registration is not ultimately verified, this does not burden the TRS Fund for people who need the service. Doing so will ensure that people who need IP CTS when using the telephone have access when they need the service.

Finally, the Commission should reconsider its proposed changes to rules requiring CA involvement in 9-1-1 calls. These changes risk imposing significant delays in reconnecting IP-CTS users to 9-1-1 that may lead to life or death consequences.

Table of Contents

Summary	iv
Discussion.....	6
I. The Commission should not tie users' unique account identifier to personal information included in the User Registration Database. (§ 33).....	7
A. Requiring providers to submit personally identifiable account identifiers with call detail reports would unconstitutionally infringe on substantial privacy interests of IP CTS users.	8
B. Requiring providers to submit personally identifiable account identifiers with call detail reports would cause serious harm to professional and medical privacy interests.	10
C. The Commission can still achieve its goals while respecting users' privacy by requiring providers to submit a randomized number with call detail reports.....	12
II. The Commission should allow providers to continue service while user registration is pending. (§ 34)	13
III. The Commission should reconsider its proposed 911 call-routing rules and undergo further study of consequences to IP-CTS users. (§ 36-38)	14

Discussion

The Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), the National Association of the Deaf (NAD), the Association of Late-Deafened Adults (ALDA), the Cerebral Palsy and Deaf Organization (CPADO), the American Association of the Deaf-Blind (AADB), Deaf Seniors of America (DSA), and the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASDHH) (Consumer Groups) and the Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC) and the Rehabilitation Engineering Research Center on Universal Interface & Information Technology Access (IT-RERC) respectfully submit these comments in response to the Commission's Further Notice of Proposed Rulemaking ("FNPRM") in the above-referenced docket.¹

Last June, the Commission took action it believes will reduce waste, fraud, and abuse in IP CTS, an assumption the Commission inferred without first investigating.² The Commission changed the rules for marketing practices and provider compensation and sought comment on a number of other proposals.³ As the Consumer Groups' comments in response to the 2018 FNPRM explain, the Commission has provided no evidence of waste, fraud, and abuse beyond bare anecdotes and isolated instances of unethical marketing practices.⁴ Without a sufficient record, the Commission is

¹ *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Further Notice of Proposed Rulemaking, & Order, CG Docket Nos. 13-24, 03-123 (Feb 15, 2019) ("2019 Order & FNPRM"), <https://www.fcc.gov/document/fcc-acts-improve-management-ip-captioned-telephone-service-0>.

² *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking & Notice of Inquiry, CG Docket Nos. 13-24, 03-123, (June 8, 2018), <https://www.fcc.gov/document/ip-cts-modernization-and-reform>.

³ *Id.*

⁴ See Reply Comments of Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), et al., CG Docket Nos. 13-24, 03-123 (Oct. 16, 2018) at 8-10, <https://www.fcc.gov/ecfs/filing/101630636302>. ("Consumer Group Reply Comments").

limited by Section 225 in the ways it can address waste, fraud, and abuse.⁵ Under Section 225, the Commission must ensure that all Americans who need the service may access it.⁶ When addressing waste, fraud, and abuse, the Commission must take care not to hinder legitimate IP CTS use.

The User Registration Database (“URD”) can help the Commission understand the increase in minutes, helping the Commission propose rules that target the sources of waste, fraud, and abuse without limiting legitimate use. The URD can also help the Commission better understand legitimate growth in the program caused by people aging into hearing loss, learning about the program, or becoming more technologically literate.⁷

However, the Commission’s plan for the URD⁸ raises the same significant privacy concerns the Consumer Groups expressed during the implementation of the database in VRS.⁹ Moreover, the Commission’s proposals to change the IP CTS call-routing rules for 9-1-1 calls raise significant risks of life-threatening delays.

I. The Commission should not tie users’ unique account identifier to personal information included in the User Registration Database. (¶ 33)

The Commission proposal contemplates that IP CTS calls will be tracked using a unique account identifier to help identify waste, fraud, and abuse in the program.¹⁰ Instead, the Commission should not require providers to submit the same unique account identifier used in the URD in call detail reports. While the Commission should collect data about IP CTS, the proposed level of specificity infringes on users’ privacy rights. Rather than submitting the unique account identifier

⁵ 47 USC § 225(d)(1).

⁶ *Id.*

⁷ *One in Five Americans has Hearing Loss*, Hopkins Medicine, (Nov. 14, 2011), https://www.hopkinsmedicine.org/news/media/releases/one_in_five_americans_has_hearing_loss

⁸ 2019 Order & FNPRM at ¶ 33.

⁹ Ex Parte of TDI, et al. at 1-2, CG Docket Nos. 03-123, 10-51 (Feb. 20, 2018), <https://www.fcc.gov/ecfs/filing/10220098702470>; Ex Parte of NAD, et al. at 1-2, CG Docket No. 10-51 (May 21, 2015), <https://www.fcc.gov/ecfs/filing/60001032541>.

¹⁰ *Id.* (“Database registration of IP CTS users will enable the administrator to conduct objective identity verification in accordance with uniform criteria, perform more effective auditing and review of IP CTS provider practices, and better substantiate the eligibility of IP CTS minutes submitted for compensation.”).

located in the URD with call detail reports, providers should associate IP CTS calls with a randomized identifier. If the Commission suspects a particular user of waste, fraud, and abuse, it can request the unique account identifier from the provider and find the user.

A. Requiring providers to submit personally identifiable account identifiers with call detail reports would unconstitutionally infringe on substantial privacy interests of IP CTS users.

The Commission proposes expanding the data accompanying TRS Compensation requests to include a unique account identifier for each IP CTS user.¹¹ The Commission proposes the use of an email address, the device's serial number, or the users' login information.¹²

We urge the Commission to take a different approach that takes seriously its constitutional and statutory obligations to protect consumers' privacy. Requiring providers to include the unique account identifier for users with call detail reports and tying the unique account identifier back to the information collected in the URD infringes on users' privacy by creating an Orwellian database of call records that afford the Commission intimate details about users' personal and business conversations. The unique account identifier stored in URD's call detail log should not include any directly personally identifying information about users, such as users' login information or email address, nor should it include indirectly identifiable information about the user, such as device serial numbers.

Instead, providers should submit with call detail reports another random number the Commission cannot directly or indirectly tie to user records in the URD without consulting the provider and demonstrating a sufficient need to identify a particular caller from the call detail log. The random number should be tied to individual users within providers' system, so the Commission can request users' identity where it has probable cause to suspect the user of fraud. But there is no reason for the call details of every users' calls to include information the Commission can use to determine the users' identities.

¹¹ *Id.*

¹² *Id.*

People who are deaf, hard of hearing, and DeafBlind are entitled to constitutional and statutory privacy rights. In providing IP CTS, the Commission must avoid infringing users' privacy interests when addressing purported waste, fraud, and abuse. Though the Commission can collect insightful data in a privacy protective way, the proposal offered in the FNPRM is not narrowly construed to protect user privacy.

Since the 1960s, the Supreme Court has recognized a Constitutional right of privacy.¹³ Courts have recognized two interests in protecting privacy: "One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions."¹⁴

The Fourth Amendment in particular provides bedrock protection against government intrusion on privacy protection by limiting the ability to seize personal information.¹⁵ While the Supreme Court historically dismissed the notion of a Fourth Amendment-protected interest in dialed phone numbers,¹⁶ the Court has increasingly concluded that the significant quantities of information gathered about people in the digital age can implicate the Fourth Amendment and require a warrant.¹⁷

The Commission's proposed requirement implicates both threads of constitutional privacy interests by forcing consumers with disabilities to choose between placing a phone call in an accessible format and disclosing the details of that call to the government or not making the phone call at all. Specifically, the Commission seeks a full record of every call placed by each IP CTS user connected with each user's personal information that is stored in the User Registration Database.

¹³ *Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965).

¹⁴ *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977) (internal citations omitted).

¹⁵ U.S. Const. amend. IV.

¹⁶ *Smith v. Maryland*, 442 U.S. 735, 745-46 (1979).

¹⁷ *See, e.g., Riley v. California*, 573 U.S. 373, 386 (2014) (requiring law enforcement obtain a warrant before searching a defendant's cell phone); *U.S. v. Jones*, 565 U.S. 400, 404 (2012) (prohibiting law enforcement from collecting GPS data from a device physically installed on a suspect's vehicle without obtaining a warrant); *Carpenter v. U.S.*, 138 S. Ct. 2206, 2217 (2018) (holding that the Fourth Amendment protects against the collection historical cell site location information).

This would allow the Commission a baseless and unconstitutional window into the lives of not only IP CTS users, but those that they communicate with.

The Commission's proposal that providers coercively require user "consent" also violates providers' privacy obligations under the Communications Act. Section 222 prevents providers from using, transmitting, or providing access to consumer proprietary network information (CPNI) for purposes other than providing customers with service.¹⁸ Yet the Commission's proposal that providers send unique account identifiers with call detail report triggers all three prohibited provider uses of CPNI.¹⁹

The Commission relies on Section 222's exception for user consent.²⁰ But forcing users to "consent" to private information to use an accessible telephone service whose provision is a civil right required by Title IV of the Americans with Disabilities Act stretches far beyond Section 222's apparent conception of the term.²¹ Here, the Commission proposes exposing details about every call placed by IP CTS users to the government if they need to use the service, offering no ability to opt out besides foregoing the service altogether.

B. Requiring providers to submit personally identifiable account identifiers with call detail reports would cause serious harm to professional and medical privacy interests.

Not only would disclosure of IP CTS users' data be outside users' control, but the results would unfairly burden people who are deaf, hard of hearing, and DeafBlind. People who use IP CTS rely

¹⁸ 48 U.S.C. § 222(h)(1)(A) & (B) (CPNI includes: "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.")

¹⁹ 48 U.S.C. § 222(c)(1).

²⁰ 48 U.S.C. § 222(c)(2).

²¹ 48 U.S.C. § 222(c)(1).

on the service for important phone calls in their life and requiring consent to submit call details that tie back to users directly may seriously hinder their professional obligations and medical privacy.

For example, medical facilities often have specifically identifiable phone numbers. If an IP CTS user calls a medical facility, for example a clinic that specializes in childbirth, dialysis, or cancer treatment, the Commission would force IP CTS user to reveal intimate details about their lives the user does not want to share with anyone, especially the government.

Additionally, this disclosure may contradict professional ethical obligations. For example, ethical rules sometimes prohibit attorneys from sharing information about clients' identities.²² Social worker ethical rules impose similar client confidentiality restrictions.²³ Under the proposed rule, IP CTS users who are attorneys and social workers are forced to either violate ethical rules by consenting to give that information to the Commission, or are forced to use the telephone without captions, which makes their client more difficult or impossible to understand.

These privacy concerns are exacerbated when the IP CTS user works in the medical field. Some counselors are deaf, hard of hearing, and DeafBlind and may use the telephone when working with clients.²⁴ Phone numbers are increasingly used as verification tools and are more tied to peoples' identity now than ever before.²⁵ In light of recent concerns about phone numbers as personal identifiers, the Commission's proposed rule may create ethical challenges for people who use IP CTS in their professions. The person using IP CTS is either forced to disclose the details of that call to the government, tied back specifically to their identity, or to go without an ADA mandated service.

Against the backdrop of Section 225's mandate that the Commission facilitate "functionally equivalent" telecommunication service to people who are deaf, hard of hearing, and DeafBlind, the

²² Model Rules of Prof'l Conduct R. 1.6 (2018).

²³ National Association of Social Workers Code of Ethics R. 1.07 (2017).

²⁴ Shannon Ruane, *Counseling Deaf Clients, It's not for everyone*, American Counseling Association (Feb. 22, 2012), <https://www.counseling.org/news/aca-blogs/aca-member-blogs/aca-member-blogs/2012/02/22/counseling-deaf-clients-it-s-not-for-everyone>.

²⁵ Lily Hay Newman, *Phone Numbers Were Never Meant as ID. Now We're All At Risk*, Wired, <https://www.wired.com/story/phone-numbers-indentification-authentication/>.

consent requirement is unfair and unduly restrictive on users' privacy.²⁶ The coercive "consent" requirement forces people who are deaf, hard of hearing, and DeafBlind to choose between accessible and private telephone service. As discussed above, this may also limit people who use IP CTS from using the service during their job. Considering the limitations placed on people who are deaf, hard of hearing, and DeafBlind in the employment context, removing IP CTS as a way of using the telephone may also hinder employment opportunities.

C. The Commission can still achieve its goals while respecting users' privacy by requiring providers to submit a randomized number with call detail reports.

By using a random number that is not included in the URD, rather than a unique account identifier that includes users' personal information, the Commission can monitor for patterns of waste, fraud, and abuse without infringing on IP CTS users' privacy rights. The randomized number will also allow the Commission to track legitimate growth in the program and help the Commission more effectively serve people who rely on IP CTS as technology advances without compromising legitimate users' privacy by disclosing the length and frequency of their calls.

If the Commission requires providers to assign random numbers for IP CTS users rather than using the unique account identifier provided in the URD, it can still monitor for waste, fraud, and abuse. For example, if the Commission suspects a user listed in the call detail records of acting fraudulently, it may request that users' unique account identifier from the provider and find that user in the URD.

As mentioned in our previous comments, the Commission has based its assumption of waste, fraud, and abuse on mere anecdotes and an increase in the use of IP CTS minutes.²⁷ Collecting data about calls in a privacy protective manner will allow the Commission to provide the public with data necessary for identifying trends in IP CTS use that can expose waste, fraud, and abuse without imposing undue burdens on users. This is precisely the data the DC Circuit in *Sorenson* requested the

²⁶ 47 U.S.C. § 225(d)(1).

²⁷ Consumer Group Comments at 8-10.

Commission show before imposing the \$75 and default captions off rules.²⁸ If the Commission identifies data demonstrating that IP CTS is in fact being misused, that data would also help point to the source and directly address the problem, rather than the Commission making rules that hinder legitimate use without looking for the source.

II. The Commission should allow providers to continue service while user registration is pending. (¶ 34)

The Commission proposes allowing the continued provision of IP CTS while user registration is pending.²⁹ As noted in the FNPRM, this proposal will ensure that people who register for IP CTS will have access to this essential communication service as soon as possible, without increasing the risk of waste, fraud, and abuse.³⁰

As stated in our recent *ex parte*, we fully support this proposal and we appreciate the Commission including this in the FNPRM.³¹ Since providers will ultimately bear the cost if user registration is not verified, the TRS Fund will remain available only for those who need IP CTS. This change is essential to ensuring consumers are not unfairly burdened when they must submit supplementary identity information or there are problems the user cannot control.³² There are incalculable benefits to ensuring people who rely on IP CTS to communicate with the people in their lives have access to the service while awaiting verification. Since the risk of burdening the TRS Fund is negated by providers' compensating minutes when verification fails, the Commission should adopt this proposal.

²⁸ *Sorenson Communs. v. FCC*, 755 F.3d 702, 707-10 (D.C. Cir. 2014) (asking “where is the evidence that IP CTS technology is being fraudulently used?”).

²⁹ 2019 Order & FNPRM at ¶¶ 34-35.

³⁰ *Id.* at 34.

³¹ *Ex Parte* of HLAA and TDI (Feb. 7, 2019) (“Consumer Groups *Ex Parte*”), <https://www.fcc.gov/ecfs/filing/10207931118065>.

³² *Id.*

III. The Commission should reconsider its proposed 911 call-routing rules and undergo further study of consequences to IP-CTS users. (¶¶ 36-38)

The Commission seeks comment on eliminating rules requiring IP CTS CAs to verbally transmit information about the provider, the callers' name, the CA's name, and the CA's identification number during 9-1-1 calls.³³ Additionally, the Commission proposes eliminating the requirement for IP CTS service that the CA reconnects a user to a PSAP through VoIP, substituting the provision of a ten-digit NANP number that would allow a PSAP to call the user back via the IP CTS provider's call routing system.³⁴

Section 225 requires the Commission's regulations ensure IP CTS is provided in the "most efficient manner" and that the program provide "functionally equivalent" services.³⁵ Above all else, the Commission must prioritize these mandates when regulating 911 calls. Unfortunately, the Commission's proposed changes trade one problem—reconnecting a PSAP to an IP CTS user via a CA—for another—requiring VoIP-based IP CTS providers to provide call routing for 9-1-1 calls.

If the Commission requires assigning ten-digit numbers to VoIP-based IP CTS for callback purposes, then it will implicitly require that 9-1-1 calls will be routed through IP CTS providers, rather than consumers' wireless carrier or VoIP service provider. This is precisely the same scenario as currently exists in the VRS program, where relying on providers to connect to 9-1-1 has led to lag times of up to several minutes—an unacceptable result in the emergency context.³⁶ For this reason, TRS users are still not receiving equal services consistent with the national call-taking standards for answering 9-1-1 calls:

Ninety percent (90%) of all 9-1-1 calls arriving at the Public Safety Answering Point (PSAP) shall be answered within ten (10) seconds

³³ 2019 Order & FNPRM at ¶¶ 36-38.

³⁴ *Id.* at ¶ 39.

³⁵ See 47 U.S.C. § 225(b)(1) & (a)(3).

³⁶ Comments of Donna Platt & Richard Ray, PS Docket Nos. 11-153 & 10-255 (Feb. 9, 2012), <https://www.fcc.gov/ecfs/filing/6016985128>; see also, e.g., Comments of William T. Ennis, PS Docket No. 11-153 (Jan. 9, 2012), <https://www.fcc.gov/ecfs/filing/6016879887>; Comments of Krystallo Tziallila, PS Docket Nos. 11-153 & 10-255 (Dec. 13, 2011), <https://www.fcc.gov/ecfs/filing/6016878123>.

during the busy hour (the hour each day with the greatest call volume, as defined in the NENA Master Glossary). Ninety-five (95%) of all 9-1-1 calls should be answered within twenty (20) seconds.³⁷

It is critical that IP CTS 9-1-1 calls efficiently connect users with emergency responders so that the precious advice and directions from 9-1-1 providers is not delayed by the minutes that can mean life or death in fire, poisoning, or other situations.

Though the current 9-1-1 calling processes for IP CTS could be improved, the Commission's proposal does not actually solve the problems associated with 9-1-1 calls; it just addresses one problem at the expense of creating another one. The Commission should delay modifying its rules until it has arrived at a solution that better addresses the foregoing considerations.

³⁷ National Emergency Number Association Call Answering Standard/Model Recommendation, 8 § 3 (Aug. 31, 2017), https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/NENA_56-005.1_Call_Answering.pdf.